

08-24-05

WAF



AUG 23 2005

TRANSMITTAL OF APPEAL BRIEF (Small Entity)

Docket No.
RJB-10102/15

In Re Application Of: John Roberts

Application No.	Filing Date	Examiner	Customer No.	Group Art Unit	Confirmation No.
10/777,393	February 12, 2004	Andrew D. Wright	25006	3617	5772

Invention: ISLAND SWIM RAFT

COMMISSIONER FOR PATENTS:

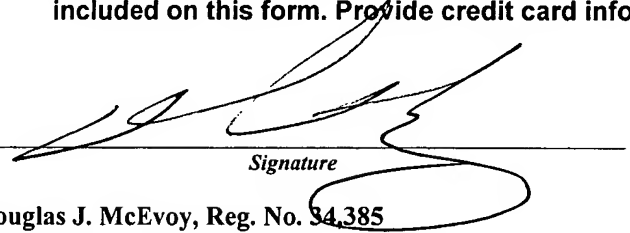
Transmitted herewith in triplicate is the Appeal Brief in this application, with respect to the Notice of Appeal filed on:

☒ Applicant claims small entity status. See 37 CFR 1.27

The fee for filing this Appeal Brief is: \$250.00

- ☒ A check in the amount of the fee is enclosed.
- ☒ The Director has already been authorized to charge fees in this application to a Deposit Account.
- ☒ The Director is hereby authorized to charge any fees which may be required, or credit any overpayment to Deposit Account No. 07-1180
- ☐ Payment by credit card. Form PTO-2038 is attached.

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.


Signature


Dated: Aug. 23, 2005

Douglas J. McEvoy, Reg. No. 34,385
Gifford, Krass, Groh, Sprinkle, Anderson
& Citkowski, P.C.
2701 Troy Center Drive - Suite 330
P. O. Box 7021
Troy, Michigan 48007-7021
(248) 647-6000

Express Mail

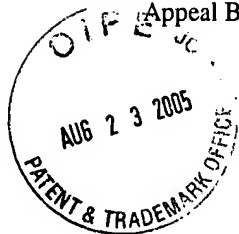
EV 73443705065

CC:

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class ^{EXP} mail in an envelope addressed to "Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on	
Aug. 23, 2005 (Date)	
 Signature of Person Mailing Correspondence	
Judith T. Lange Typed or Printed Name of Person Mailing Correspondence	

Serial No. 10/777,393

Appeal Brief



Attorney Docket No. RJB-10102/15

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: John Roberts

Serial No.: 10/777,393

Group Art Unit: 3617

Filed: February 12, 2004

Examiner: Andrew D. Wright

For: ISLAND SWIM RAFT

APPEAL BRIEF

Mail Stop Appeal Brief
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir or Madam:

Responsive to the Final Office Action dated April 26, 2005, and concurrent with the Notice of Appeal contemporaneously filed herewith, Applicant presents the following appeal brief in the present application. Applicant further avers as follows:

1.0 Real Party in Interest.

The real party of interest in the present application is the listed inventor, John Roberts.

2.0 Related Appeals and Interferences.

No other appeals or interferences are known by Applicant to be pending and which will have any effect on the Board's decision in the pending appeal.

3.0 Status of Claims.

Claims 1-17 remain pending in the application and are the subject of this appeal.

4.0 Status of Amendments.

Amendment A was filed on January 10, 2005, responsive to the Non-Final Action dated August 20, 2004. A Final Office Action was issued on April 26, 2005 and which precipitated the filing of this Appeal.

5.0 Summary of the Claimed Subject Matter.

The present invention, defined in independent claim 1 in this appeal, is a swim raft (Reference No. 10, page 5, line 6, Fig. 1) exhibiting a three-dimensional shaped body exhibiting a substantially planar bottom (Ref. No. 18, page 5, line 15, Fig. 4), a curved side (Ref. No. 20, page 5, line 15, Fig. 4) and a sloping top (Ref. No. 22, page 5, line 16, Fig. 4). The body includes an outer shell constructed of a first buoyant material (Ref. No. 23, page 6, line 4, Fig. 4) and which encapsulates a solid inner core constructed of a second buoyant material (Ref. No. 24, page 6, line 5, Fig. 4). At least one decorative indicia (Ref. No. 26, page 6, line 16, Figs. 1-3) is associated with the sloping top.

Dependent claim 3 recites the outer shell as including a polyester laminate, a pigmented polyester gel coat being applied over the polyester laminate shell (page 6, lines 5-8). Dependent claim 4 further recites the gel coat as including a textured non-skid surface applied thereover (page 6, lines 8-9). Dependent claim 7 teaches the decorative indicia as including a miniaturized lighthouse structure extending from the sloping top (see page 7, lines 4-6, Ref. No. 30, Fig. 2). Dependent claim 8 further recites the decorative indicia as further including an artificial palm tree extending from the sloping top (see at page 7, lines 7-10, Ref. Nos. 34 and 36, Fig. 3).

The present invention, as defined in independent claim 10, substantially recites the features associated with claim 1, as well as additionally reciting the inner core as being a foam material (again Ref. No. 24). Additionally, the decorative indicia is further recited as including

an artificial grass (see again Ref. No. 26) applied over the sloping top and across a predetermined area. Further, the decorative indicia is recited as further comprising a structural object projecting from the sloping top and including at least one of a flag pole, a miniaturized lighthouse and an artificial palm tree (Ref. No. 28, page 7, line 2, Fig. 1; Ref. No. 30, page 7, line 5, Fig. 2; and Ref. Nos. 34 and 36, page 7, lines 7-8, Figs. 3-4).

The present invention, as defined in independent claim 13, sets forth a method for constructing a swim raft as substantially recited in each of independent claims 1 and 10, and which includes the steps of forming a three-dimensional shaped buoyant and stable body from a solid and foamable core material (page 7, lines 19-2) and such that the body exhibits a substantially planar bottom, a circumferentially extending and curved side and a sloping top. The body is further recited as being coated with a laminate outer shell material (page 8, line 1) and which encapsulates the inner foam core, as well as the step of applying at least one decorative indicia upon the top surface (page 8, line 2). Dependent claims 14-17 substantially repeat, in method step format, the features associated with the above-described dependent claims 3-9.

6.0 Grounds of Rejection to Be Reviewed on Appeal.

Claims 1, 2, 6, 9 and 11 stand rejected under 35 U.S.C. §102(b) as being anticipated by Gentile (USPN 3,182,340). Claims 1, 2, 5 and 9 stand rejected under 35 U.S.C. §103(a) as being obvious over Von Norring (USPN 3,694,837), in view of Keller (USPN 3,619,833) and Lekhtman (US 2004/0028478). Claims 3 and 4 stand rejected as being obvious over Von Norring in view of Keller and Lekhtman as applied to claim 2 and further in view of Abeille (USPN 4,825,798). Claims 6 and 10 stand rejected as being obvious over Von Norring in view of Keller and Lekhtman, as applied to claim 1, and further in view of Simon (USPN 3,814,439).

Claim 8 stands rejected as being obvious over Von Norring in view of Keller and Lekhtman as applied to claim 1, and further in view of Treppedi et al. (US 2002/0095947). Claims 1 and 7 stand rejected as obvious over Bass (USPN 3,707,736) in view of Mallory (USPN 3,893,201). Claims 11 and 12 stand rejected as obvious over Von Norring in view of Keller and Lekhtman and Simon as applied to claim 6, and further in view of Abeille. Claim 13 stands rejected as being obvious over Gentile (USPN 3,182,340). Claims 13, 16 and 17 stand rejected as obvious over Von Norring in view of Keller and Lekhtman and Simon as applied to claim 6. Finally, claims 13-15 stand rejected as obvious over Von Norring in view of Keller and Lekhtman and Abeille as applied to claims 3 and 4 above.

8.0 Argument.

Claims 1, 2, 6, 9 and 11 as Anticipated by Gentile

Gentile teaches a float including an annular or ring-shaped frame exhibiting an annular recess in its top surface, as well as a plurality of fastening means spaced around the groove. The body is constructed of a cellular or foamed polyurethane, in addition to any other suitable foamed or expanded synthetic resin or plastic. The float body is further disclosed as exhibiting an orange, red, or yellow color to provide easy visual spotting during the daytime, as well as possibly including a fluorescent additive for visual location during nighttime.

Gentile does not teach or suggest a three-dimensional shaped article exhibiting a planar bottom, curved side and sloping top. The Examiner avers as much on page 2, paragraph 4 of his remarks, however the Applicant disagrees.

Applicant further submits that Gentile does not illustrate a decorative indicia associated with the sloping top, and as recited in claim 1. Rather, the Applicant notes the flagpole 36 and flag 38 designate a diver's pennant associated with the annular shaped float.

Claims 1, 2, 5 and 9 as Obvious Over Von Norring in View of Keller and Lekhtman

The Examiner has combined the Von Norring, Keller and Lekhtman patents as teaching the obviousness of the present invention, as particularly recited in claim 1. Again, Applicant submits that the shaping of the three-dimensional shaped body is not taught or suggested by the prior art references, either considered separately or in combination.

In rejecting claims under 35 U.S.C. §103, the Examiner bears the initial burden of presenting a prima facie case of obviousness. See *In re Rijckaert*, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993). A prima facie case of obviousness is established by presenting evidence that the reference teachings would appear to be sufficient for one of ordinary skill in the art having the references before him to make the proposed combination or modification. See *In re Litner*, 458 F.2d 1013, 1016, 173 USPQ 560, 562 (CCPA 1972). The conclusion that the claimed subject matter is prima facie obvious must be supported by evidence, as shown by some objective teaching in the prior art or by knowledge generally available to one of ordinary skill in the art that would have led that individual to combine the relevant teachings of the references to arrive at the claimed invention, see again *In re Fine*, 837 F.2d 1071, 1074, 5 USPQ2d, 1596, 1598 (Fed. Cir. 1988).

Rejections based on §103 must rest on a factual basis with these facts being interpreted without hindsight reconstruction of the invention from the prior art. The Examiner may not, because of doubt that the invention is patentable, resort to speculation, unfounded assumption or hindsight reconstruction to supply deficiencies in the factual basis for the rejection. Rather, and when satisfying the burden of showing obviousness of the combination, the Examiner can show some objective teaching in the prior art or knowledge generally available to one of ordinary skill in the art which would lead that individual to combine the relevant teachings of the references.

In re Lee, 277 F.3d 1338, 1343, 61 USPQ2d 1430, 1434 (Fed. Cir. 2002), citing *In re Fritch*, 972 F.2d 1260, 1265, 23 USPQ2d 1780, 1783 (Fed. Cir. 1992). Broad conclusory statements regarding the teaching of multiple references, standing alone, are not “evidence” *In re Dembiczak*, 173 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999). Mere denials and conclusory statements, however, are not sufficient to establish a genuine issue of material fact. *Dembiczak*, 175 F.3d at 999-1000, 50 USPQ2d at 1617, citing *McElmurry v. Arkansas Power & Light Co.*, 995 F.2d 1576, 1578, 27 USPQ2d 1129, 1131 (Fed. Cir. 1993).

Applying this rationale to the present fact situation, Von Norring teaches a floating body having an open central inner space (see at 15), as well as bottom disposed apertures 16 for bringing fluid into the central space. The Examiner further cited Von Norring as teaching a core 14, however a further reference to its detailed description notes that the interior includes an outer space 13, and which contains air and floating elements 14 like pieces of sponge or cellular material, as well as an inner space 15, which further contains a certain amount of air (see column 1, lines 50-54).

Keller was further cited as teaching a plastic raft exhibiting a foam core and an outer shell. Keller in fact teaches a foam ring 12 of rigid polyurethane foam extending about a side perimeter of the raft. Of further note, a plurality of individual pie shaped sections 15 are separated by pie shaped members such as plywood segments 21 and joined together by a plywood block 22. A significant interior volume of the raft includes an air chamber 13, and which admits or expels a given volume of air in order to establish a desired degree of pressurization, and to thereby adjust a height of the raft in the water.

Lekhtman further teaches a modular dock system and which includes a plurality of interior (open float) cavities. The top wall further includes accessory support holes, such as for

railing posts or parasols. Of note, Lekhtman was cited as teaching a golf playing surface, the artificial turf further constituting a decorative indicia.

It is submitted that these references, in cooperation, do not teach or suggest the construction of the three-dimensional shaped body as set forth in claim 1. Further, and beyond the general allegation of each reference representing some form of floating article, there is no teaching or suggestion to support their combination in creating a swim raft design as recited in claim 1, and in particular which includes a unitary shaped and structured body exhibiting the desired combination of substantially planar bottom, curved side and sloping top.

Claims 3 and 4 as Obvious Over Von Norring/Keller/Lekhtman in View of Abeille

Applicant repeats the above differences as relating to Von Norring, Keller and Lekhtman. Abeille further teaches the application of a monocoque decking with stone surface for floating docks and the like, and which includes a cured polymeric material with a selected quantity of stone particles being disposed thereupon.

In response, Applicant notes that the recitation of gel coat, such as pigmented, is by itself relatively well known in the marine industry. As such, it is submitted that Abeille is merely representative of the knowledge of pigmented gel coat technology in the marine industry.

Rather, what is submitted as being non-obvious is the incorporation of a pigmented gel coat applied over a polyester laminate shell, such as in turn defining the three-dimensional shaped and distinguishing body configuration of the floating swim raft as recited in claim 1.

Claims 6 and 10 as Obvious Over Von Norring/Keller/Lekhtman in View of Simon

Applicant repeats the above arguments as presented in view of the primary cited references. The Simon patent was further cited as teaching a golf playing surface with artificial turf and a flag. In fact, Simon illustrates a portable and Styrofoam shaped floating article

exhibiting a top covering of artificial grass bristles and a cup and flag stick which emulates a golf green and hole. The device is further described as being anchored at a particular location in a body of water by weight members hanging from the bottom of the device.

In marked contrast to the device of the present invention, as specifically set forth in independent claim 10, Simon does not teach or suggest application to a three-dimensional shaped swim raft body again exhibiting the desired features of a planar bottom, curved side and sloping top. Rather, Simon is directed to a novelty toy of some sort and bears little relation to a functional and full-sized swim raft design, as structurally recited in claim 10, and which again incorporates the additional features of a decorative artificial grass applied onto a sloping top and in cooperation with a projecting structural object.

Claim 8 as Obvious Over Von Norring/Keller/Lekhtman in View of Treppedi

Applicant repeats and realleges the distinguishing features of independent claim 1 over the primary cited references. With further regard to Treppedi, the application of an umbrella attachable to a mobile cooler device is submitted to not teach or suggest an artificial palm tree design extending from a sloping top of a unitary constructed swim raft as recited in claim 1. In relevant part, and reapplying the obviousness standard argued above, Applicant disagrees with the Examiner's assertion that it would be obvious to modify the device of Von Norring to incorporate the structural features of Treppedi, absent some suggestion or teaching to do so.

Claims 1 and 7 as Obvious Over Bass in View of Mallory

Applying the same analysis of claim 1, as compared to the Von Norring, Keller and Lekhtman references, Applicant again notes that neither Bass nor Mallory teach or suggest the three-dimensional shaped body as recited in claim 1, and with or without the decorative lighthouse structure of claim 7.

Mallory teaches a multi-buoyancy buoy exhibiting a plurality of arcuate flotation elements removably secured thereabout to provide a selective degree of buoyancy and stability. Bass teaches a fisherman's lantern float exhibiting a lantern portion 52 extending from a ballast filled and cup-shaped body.

Neither of the Bass or Mallory references teach or suggest the swim raft design exhibiting a body shape as set forth in claim 1, and again including a planar bottom, curved side and sloping top. Further, neither reference teaches or suggests the combination of the body shape of claim 1 in combination with a selective lighthouse design as in claim 7.

Claims 11 and 12 as Obvious Over Von Norring/Keller/Lekhtman/Simon/Abeille

It is submitted that the combination of prior art references, each previously addressed, do not teach or suggest the features of the swim raft body, as previously described in relation to claim 10, and by which an outer shell further includes a laminate shell with a pigmented polyester gel coat applied thereupon. As regards to the allegation of the prior art teaching a textured non-skid surface, reference is again made to the distinguishing features also argued in dependent claims 3 and 4.

Claim 13 as Obvious Over Gentile

Applying the arguments set forth in the rejection of claim 1, it is submitted that Gentile does not teach or suggest the method steps of claim 13 for constructing a swim raft design exhibiting the unique body shaped structure recited. The Examiner concedes as much in his rejection, rather relying upon the general assertion that it would have been obvious and inherent, from Gentile, to one of ordinary skill in the art to construct a swim raft as recited in claim 13. In response, Applicant repeats the preceding arguments and again submits that the Gentile reference

does not teach or suggest constructing a swim raft utilizing the steps of claim 13, as substantially and structurally described in preceding relation to the arguments directed to claim 1.

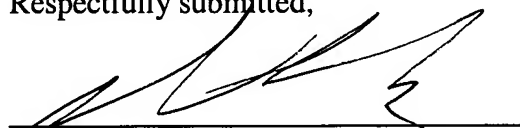
Claims 13, 16 and 17 as Obvious Over Von Norring/Keller/Lekhtman and Simon

Applicant repeats and realleges the above arguments and again simply states that it would not have been obvious to one of skill in the art to combine the teachings of the four above discussed and disparate references in sustaining the rejection of claims 13, 16 and 17, it again being understood that claims 14-17 merely recite the method steps corresponding with the previously described structural dependent claims.

Claims 13-15 as Obvious Over Von Norring/Lekhtman/Abeille

Applicant repeats and realleges the arguments stated previously and again points out that the cited references do not teach or suggest, either individually or collectively, the combination of features set forth in independent claim 13 and dependent method claims 14 and 15.

Respectfully submitted,



Douglas J. McEvoy
Registration No. 34,385
Gifford, Krass, Groh, Sprinkle,
Anderson & Citkowski, P.C.
2701 Troy Center Drive, Suite 330
P.O. Box 7021
Troy, MI 48007-7021
(248) 647-6000

Attorney for Appellant

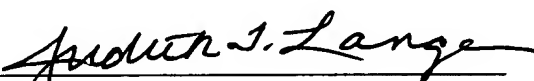
Date: Aug. 23, 2005

CERTIFICATE OF MAILING BY "EXPRESS MAIL"

"EXPRESS MAIL" MAILING LABEL NUMBER EV734437050US)

DATE OF DEPOSIT August 23, 2005

I hereby certify that this paper or fee (along with any paper referred to as being attached or enclosed) is being deposited with the United States Postal Service "Express Mail Post Office To Addressee" Service under 37 CFR 1.10 on the date indicated above and is addressed to: Mail Stop Appeal Brief, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.



Judith T. Lange

APPENDIX A

CLAIMS ON APPEAL

1. A swim raft, comprising:
a three-dimensional shaped body exhibiting a substantially planar bottom, a curved side,
and a sloping top;
said body having an outer shell constructed of a first buoyant material and which
encapsulates a solid inner core constructed of a second buoyant material; and
at least one decorative indicia associated with said sloping top.
2. The swim raft as described in claim 1, said body exhibiting a specified shape and
size and further comprising at least a polyester, plastic, polymer, or elastomer based material.
3. The swim raft as described in claim 2, said outer shell further comprising a
polyester laminate, a pigmented polyester gel coat being applied over said polyester laminate
shell.
4. The swim raft as described in claim 3, said gel coat further comprising a textured
non-skid surface applied upon said gel coat.
5. The swim raft as described in claim 1, said decorative indicia further comprising
an artificial grass applied over said sloping top and across a predetermined surface area.

6. The swim raft as described in claim 1, said decorative indicia further comprising a flag pole extending from said sloping top.

7. The swim raft as described in claim 1, said decorative indicia further comprising a miniaturized lighthouse structure extending from said sloping top.

8. The swim raft as described in claim 1, said decorative indicia further comprising at least one artificial palm tree extending from said sloping top.

9. The swim raft as described in claim 2, said inner core further comprising a foam material, said polyester laminate shell encapsulating said foam core.

10. A swim raft, comprising:
a three-dimensional shaped body exhibiting a substantially planar bottom, a curved side, and a sloping top;

said body having an outer shell constructed of a buoyant shell material and which encapsulates a solid inner foam core;

at least one decorative indicia associated with said sloping top, said decorative indicia including an artificial grass applied over said sloping top and across a predetermined area; and

said decorative indicia further comprising at least one structural object projecting from said sloping top and including at least one of a flag pole, a miniaturized lighthouse and an artificial palm tree.

11. The swim raft as described in claim 10, said outer shell further comprising a laminate, a pigmented polyester gel coat applied over said laminate outer shell.

12. The swim raft as described in claim 11, further comprising a textured non-skid surface applied upon said gel coat.

13. A method of constructing a swim raft, comprising the steps of:
forming a three-dimensional shaped buoyant and stable body from a solid and foamable core material such that said body exhibits a substantially planar bottom, a circumferentially extending and curved side, and a sloping top;
coating said body with a laminate outer shell material and which encapsulates said inner foam core; and
applying at least one decorative indicia upon said top surface.

14. The method as described in claim 13, the outer laminate shell further including a polyester laminate, further comprising the step of applying a pigmented polyester gel coat over the polyester laminate shell.

15. The method as described in claim 14, further comprising the step of applying a textured non-skid surface applied upon said gel coat.

16. The method as described in claim 13, said step of applying a decorative indicia further comprising applying an artificial grass composition over said sloping top and across a predetermined surface area.

17. The method as described in claim 16, further comprising the step of applying at least one structural object in projecting fashion from said sloping top.

APPENDIX B

EVIDENCE

None

APPENDIX C

RELATED PROCEEDINGS

None